

HOUSE BILL NO. 516

INTRODUCED BY R. LENHART

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE STATUTORY BASIS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE FISH, WILDLIFE, AND PARKS COMMISSION TO DIRECT THE DISPERSAL OR REMOVAL OF CONCENTRATIONS OF BIG GAME ANIMALS POSING A THREAT TO LANDOWNERS AND LIVESTOCK OR THE HEALTH OF WILDLIFE, HABITAT, OR THE PUBLIC; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT; AND AMENDING SECTION 87-1-225, MCA."

WHEREAS, concentrations of big game animals cause damage to private and public lands; and

WHEREAS, management of big game populations requires the cooperation of all landowners, both public and private; and

WHEREAS, existing laws are not adequate to address problems associated with the concentration of big game animals given the nature of wildlife populations, their movement across the landscape, and existing property ownership laws; and

WHEREAS, wildlife resources are valuable to the citizens of Montana without regard to political boundaries; and

WHEREAS, it is the intent of the Montana Wildlife Damage Mitigation Act to keep big game populations in balance with the available habitat and minimize, alleviate, and resolve game damage problems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana Wildlife Damage Mitigation Act".

NEW SECTION. **Section 2. Prohibition on creating or maintaining conditions leading to concentration of big game animals -- definition.** (1) As used in [sections 1 through 9], "concentration" means the occurrence of big game animals within the boundary of a property under the ownership of one person or entity in such numbers as to pose a potential threat to the health of the animals, a detriment to the habitat on

1 which the animals rely, or an imbalance in the total number of animals or the age or sex characteristics of the
2 population in the district.

3 (2) An owner of real property may not create or maintain a concentration of big game animals that
4 results or may result in:

5 (a) damage to adjoining property, whether public or private;

6 (b) the inability of the department to manage big game animals to maintain a stable population, the
7 health of big game animals, or the habitat on which the big game animals rely; or

8 (c) the transmission of disease.
9

10 **NEW SECTION. Section 3. Determination of existence of concentration of big game animals.** A
11 person who owns land within any hunting district established by the commission may make a request for the
12 department to investigate the concentration of big game animals within the district. Upon receipt of the request
13 for investigation, the department shall review the request and determine if a landowner is creating or maintaining
14 a condition that results in a concentration of big game animals.
15

16 **NEW SECTION. Section 4. Mitigation of circumstances causing concentrations of big game**
17 **animals.** If the department determines that a landowner is creating or maintaining a condition that results in the
18 concentration of big game animals, it may reduce the concentration of big game animals with requirements
19 including but not limited to:

20 (1) dispersing the big game animals;

21 (2) allowing the department to conduct programs to reduce the numbers of big game animals through
22 hunting;

23 (3) adjusting the length and scheduling of hunting seasons;

24 (4) increasing the number of licenses issued for the hunting of big game animals within the district; and

25 (5) modifying or restricting the type and number of licenses issued for the hunting of big game within
26 the district.
27

28 **NEW SECTION. Section 5. Remedies for creating or maintaining conditions resulting in**
29 **concentration of big game animals.** A landowner who fails to comply with the mitigation proposals directed
30 by the department as provided in [section 4], except those mitigation proposals requiring hunts on private

property, is subject to the imposition of any or all of the following:

- (1) disqualification from participation in the block management program;
- (2) loss of landowner preferences for hunting licenses;
- (3) loss of nonresident set-aside licenses on the property; and
- (4) restricting or prohibiting the harvest of antlered animals in locations of concentration.

NEW SECTION. Section 6. Method of determining if landowner is creating or maintaining conditions resulting in concentration of big game animals. The department shall adopt rules that specify the procedures and criteria to be followed in determining whether a landowner is creating or maintaining conditions that result in the concentration of big game animals. In adopting rules, the department shall include provisions that:

- (1) consider all relevant scientific information regarding the game animals in the district and the nature and condition of the habitat in the district;
- (2) review the record of harvest of big game animals in the district, the issuance of big game hunting licenses, and the big game hunting success rate;
- (3) consider the land ownership in the district and land use practices;
- (4) provide an opportunity for the landowner alleged to be creating or maintaining concentrations of big game animals to present contrary evidence; and
- (5) provide an opportunity for other district landowners to provide evidence and testimony regarding the effects of big game concentrations on their property.

NEW SECTION. Section 7. Notification and time limits. In adopting rules, the department shall provide, at a minimum:

- (1) written notification to the landowner alleged to be creating or maintaining a concentration of big game animals; and
- (2) an opportunity for the landowner who is alleged to be creating or maintaining a concentration of big game animals to respond.

NEW SECTION. Section 8. Advisory committees. (1) The commission shall establish a committee to advise the commission regarding statewide rules to determine the existence of a concentration of big game

1 animals and the procedures for reviewing written complaints that a landowner is creating or maintaining a
2 concentration of big game animals.

3 (2) (a) The committee must include at least five but no more than seven members, including but not
4 limited to:

5 (i) a landowner who either owns or controls by lease at least 3,000 acres;

6 (ii) a resident who has purchased a conservation license for a period of 5 consecutive years;

7 (iii) a representative of a federal land management agency with experience in wildlife biology;

8 (iv) a department big game biologist; and

9 (v) a Montana fish, wildlife, and parks commissioner.

10 (b) The director shall provide support, including staff, that is appropriate for the committee to carry out
11 its duties.

12 (3) (a) The director shall appoint a committee composed of five members to review a written complaint
13 alleging concentrations of big game animals. The committee is to include:

14 (i) a resident landowner in the district in which the alleged concentration is occurring, but not the person
15 filing the complaint or the landowner against whom the allegations are made;

16 (ii) a Montana fish, wildlife, and parks commissioner representing the district in which the complaint has
17 been filed;

18 (iii) a person who holds a resident hunting license and is familiar with the district where the alleged
19 concentration is occurring;

20 (iv) a representative of a federal land management agency if there are federally owned lands in the
21 district where the alleged concentration is occurring; and

22 (v) a department big game biologist who is responsible for the monitoring of big game animals in the
23 district where the alleged concentration is occurring.

24 (b) The committee shall review the written complaint and make recommendations to the director as to
25 its validity and possible mitigation options. The director shall provide support, including staff, that is appropriate
26 for the committee to carry out its duties.

27
28 **NEW SECTION. Section 9. Concentrations of big game animals -- liabilities.** A finding by the
29 department that a landowner is creating or maintaining a concentration of big game animals and failure by the
30 landowner to implement the mitigation proposals imposed by the department is conclusive proof in a civil action

1 by the state or a private party that the landowner is creating or maintaining a concentration of big game animals.
2 The proof may be entered as evidence by the state or a private party in a civil action seeking compensation for
3 damage resulting from creating or maintaining a concentration of big game animals.

4
5 **Section 10.** Section 87-1-225, MCA, is amended to read:

6 **"87-1-225. Regulation of wild animals damaging property -- public hunting requirements. (1)**

7 Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under
8 subsection (3) if ~~he~~ the landowner:

9 (a) allows public hunting during established hunting seasons; or

10 (b) does not significantly reduce public hunting through imposed restrictions.

11 (2) The department may provide game damage assistance when public hunting on a landowner's
12 property has been denied because of unique or special circumstances that have rendered public hunting
13 inappropriate.

14 (3) Within 48 hours after receiving a request or complaint from any landholder or person in possession
15 and having charge of any land in the state that wild animals of the state, protected by the fish and game laws
16 and regulations, are doing damage to the property or crops ~~thereon~~ on the land, the department shall investigate
17 and arrange to study the situation with respect to damage and depredation. The department may then decide
18 to open a special season on the game or, if the special season method ~~be~~ is not feasible, the department may
19 destroy the animals causing the damage or immediately implement any of the mitigation provisions provided
20 in [section 4]. The department may authorize and grant the holders of ~~said~~ the property permission to kill or
21 destroy a specified number of the animals causing the damage. ~~No~~ A wild ferocious animal damaging property
22 or endangering life ~~shall be~~ is not covered by this section."

23
24 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
25 codified as an integral part of Title 87, chapter 3, and the provisions of Title 87, chapter 3, apply to [sections 1
26 through 9].

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